

**RULES
OF
THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL**

**CHAPTER 1200-4-13
INTER-BASIN WATER TRANSFERS**

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1200-4-13-.01 PURPOSE, SCOPE, AND APPLICABILITY

(1) Purpose of The Inter-Basin Water Transfer Act

As the population and demand for water resources grow, it is prudent to engage in planning for the future and to have an explicit mechanism in place to regulate proposals for the diversion of water from one river basin to another. By removing water from rivers, such inter-basin transfers raise issues of the protection of the public health, safety, welfare and the environment, as the water is no longer available for use in the original stream. The primary purpose of The Inter-basin Water Transfer Act is to allow regulation on the basis of the quantity of water in river basins. Although the common law addresses some of these concerns, it relies on after-the-fact litigation rather than a modern regulatory system. As The Inter-basin Water Transfer Act is remedial and police power legislation, the General Assembly has declared that it shall be liberally construed to effectuate its purpose.

(2) Purpose of this Rule Chapter

The purpose of this Rule Chapter is to implement the Inter-basin Water Transfer Act through establishing procedures and requirements for permit application, processing, terms and conditions for permits, and otherwise regulate the inter-basin transfer of water.

(3) Who must apply for a permit

(a) All persons or entities:

1. which have been granted powers by the State of Tennessee to acquire water, water rights and associated property by eminent domain or condemnation; or
2. which acquire or supply water for the use or benefit of public water supply systems as defined in Title 68, Chapter 221, Section 703,

shall, when proposing a new or increased withdrawal of surface water or ground water for the purpose of transferring and/or diverting some or all of it out of a river basin either directly or through one (1) or more intermediaries, first apply for and obtain a permit from the commissioner, or his or her designee, prior to such diversion or transfer; provided, however, that in the case of ground water withdrawal this section shall only apply if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water.

- (b) Subparagraph (a) states who must apply for a permit as it is stated in P.Ch. 854. Without limiting what is stated there, the following are examples of entities that must apply for a permit:

(Rule 1200-4-13-.01, continued)

1. A new public water system whose service area will include an area that is outside of the basin of origin;
2. A public water system that proposes a new withdrawal point that is not in the same basin as some or all of the system;
3. A public water system that proposes to increase the amount it is withdrawing in order to transfer some or all of it to a system in a basin different from the basin of origin;
4. A public water system that proposes to increase the amount it is withdrawing in order to transfer some or all of it to another system in the basin of origin that will then transfer the water to a system in a basin different from the basin of origin; and
5. A private individual or corporation that proposes to withdraw water and transfer it to a public water system in a basin different from the basin of origin, either directly or through an intermediary.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New Rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.02 DEFINITIONS

When used in this Rule the following terms have the meanings given below unless otherwise specified:

“Act” means The Inter-basin Water Transfer Act, P.Ch. 854 of the Acts of 2000.

“Basin” or “river basin” means the entire topographic extent of the ten watersheds and combinations of watersheds named in §4 of the Act. Maps of these basins may be viewed at the department’s web site, currently at: <http://www.state.tn.us/environment/epo/basin/index.html>.

“Basin of origin” means the river basin where the point of withdrawal for a transfer is located.

“Board” means the Water Quality Control Board.

“Commissioner” means the commissioner of the department of environment and conservation or the commissioner’s duly authorized representative, or in the event of the commissioner’s absence, or a vacancy in the office of commissioner, the deputy commissioner.

“Department” means the department of environment and conservation.

“Downstream basin” means a basin that is downstream of the basin of origin.

“Intermediaries” means any water systems or other persons that receive water from a withdrawing system and either transfer it to another basin or pass it on to another intermediary.

“Losing river” or “Losing river basin” means a river or river basin which sustains a decrease in water as the result of a diversion or transfer of water to a different river basin and there is no significant return of the water to the river or river basin of origin.

“Permit” means an Inter-basin Water Transfer Permit. Permits are of two types, individual permits are issued for particular transfers after an application is made describing the particular project as provided in rules .03 through .06; general permits are issued by the commissioner for categories or classes of transfers and a person may be authorized for a transfer under the coverage of a general permit by filing a Notice of Intent, as provided in rule .07.

(Rule 1200-4-13-.02, continued)

“Person” means any or all persons, including individuals, firms, partnerships, associations, limited liability companies, public or private institutions, municipalities or political subdivisions, federal or state governmental agencies, or private or public corporations organized under the laws of this state or any other state or country.

“Potentially affected communities” means those units of local government, e.g., municipalities, counties, or utility districts, that have a public water system that withdraws water from a river basin or municipalities that are located downstream of a proposed transfer within fifty (50) river miles of the proposed withdrawal point.

“Potentially affected water users” means potentially affected communities and persons with an NPDES permit for a discharge, persons with a permit for a withdrawal of water, and downstream of a proposed transfer within fifty (50) river miles of the proposed withdrawal point.

“Protected Area” means a basin or portions of a basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage. These areas shall be determined and delineated by the Water Quality Control Board after giving due notice and conducting a public hearing.

“Receiving river basin” means a river basin which is the recipient of an increase in water, over and above that occurring naturally, as the result of a transfer of water from a different river basin.

“Return of water” or “return” means water that is returned to the basin of origin, or a downstream basin after a transfer to a different basin.

“Seven day, ten year low flow” or “7Q10 flow” or “low flow” means the lowest average daily flow for a duration of seven consecutive days with a recurrence interval of ten years and which is determined for the point of withdrawal from an unregulated stream, or for a withdrawal from a regulated stream, the minimum critical flow occurring once in ten years as determined by an analysis of records of operation and approved by the Commissioner.

“Significant potential to affect the flow” means, in the context of whether a ground water withdrawal is likely to affect a surface water, a withdrawal of ground water in a location that:

- (a) is in close proximity horizontally and vertically to a stream; and
- (b) has ground water with a significant degree of hydraulic connection to the surface water.

“Surface water” means any water located on the land surface which is not derived by pumping from ground water.

“Transfer” means the withdrawal, diversion, or pumping of surface water from one river basin and the use or discharge of all or any part of the water in a basin different from the basin of origin.

“Transfer facility” means any natural or man-made structure used to effect a transfer including, but not limited to, pumps, pipelines, canals, storage units, water treatment units and wastewater treatment units.

“Withdrawal” means the diversion or pumping of water out of a surface stream or from ground water if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water in the basin of origin, whether or not there is a transfer.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.03 INDIVIDUAL PERMIT APPLICATIONS

(1) Information required in a permit application.

Any person required to apply for a permit for an inter-basin water transfer under rule 1200-4-13-.01(3) and §5 of the Act shall submit an application for such permit on forms furnished, upon request, by the commissioner. The application shall require an applicant to provide the commissioner the following information:

- (a) The volume of the proposed withdrawal and the proposed transfer stated in gallons per day that the applicant seeks to be authorized;
- (b) Identification of all of the withdrawal, return, and transfer points;
- (c) The volume of water that will be returned to the basin of origin or a downstream basin;
- (d) The peak capacity of each major component in the proposed withdrawal and transfer facilities;
- (e) Engineering and economic justification for the capacity of each major component of the proposed withdrawal and transfer facilities;
- (f) An assessment of the hydraulic and environmental impacts of the withdrawal on the losing river;
- (g) An engineering, environmental, and economic assessment of the feasibility of utilizing alternate water sources by the water system in the receiving basin;
- (h) A listing of conservation programs or practices occurring or proposed of the system in the receiving river basin;
- (i) The proposed date upon which the water transfer is to commence;
- (j) The purpose and justification for the proposed transfer; and
- (k) Any other appropriate information deemed necessary by the commissioner for review of the proposed transfer.

(2) All permit applications shall be signed as follows:

- (a) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.
- (b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

(3) Interface with other required permits under the Act.

- (a) In some situations an activity may have to apply for both an inter-basin transfer permit and a permit under the Water Quality Control Act for the withdrawal. The latter is sometimes referred

(Rule 1200-4-13-.03, continued)

to as an Aquatic Resource Alteration Permit (ARAP). In such a situation the Division of Water Pollution Control shall have the applicant file one application for both permits that contains all information necessary for both and then shall process the application and either issue it with all conditions required by both Acts or deny it as required by either Act. The regulations for ARAP permits are found at 1200-4-7-.01 et seq.

(4) Application Fees

The application fees for individual inter-basin transfer permits shall be \$250.00 for a flow less than or equal to 125,000 gpd; \$500.00 for a flow greater than 125,000 gpd and less than or equal to 250,000 gpd; \$750.00 for a flow greater than 250,000 gpd and less than or equal to 375,000 gpd; and \$1,000.00 for a flow greater than 375,000 gpd and less than or equal to 500,000 gpd. Above 500,000 gpd, the fee shall be \$1,000 for each 500,000 gpd or fraction thereof. These flows shall be such flows authorized to be transferred by the permit. This shall be calculated based upon the maximum amount authorized by the permit. This fee shall apply to new applications, renewals, or those modifications that extend the term of the permit. If an applicant for a permit modification only seeks an increase of the amount authorized to be transferred for the same permit term, then the fee shall be calculated on the basis of the difference in the two amounts.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.04 PUBLIC INVOLVEMENT

- (1) After receipt of an application, the department staff shall approve a Public Notice to seek public participation and comment on the application. The approved Public Notice shall be distributed to interested persons and shall be circulated within thirty days of receipt of a completed application as follows:
 - (a) In order to inform interested and potentially interested persons of the proposed activity, the Public Notice will include the following information:
 1. Name, address, and telephone number of the applicant;
 2. Name and address of TDEC contact person;
 3. A brief description of the proposed withdrawal and transfer, including the volumes;
 4. The names of the specific waters affected by the proposed activity as well as the basin of origin and the receiving basin;
 5. The purpose of the proposed transfer;
 6. The procedure to submit comments on the proposed activity and the close of the comment period which shall not be sooner than thirty (30) days from receipt of the application;
 7. The procedure for requesting a public hearing; and
 8. A brief description of the procedure for the commissioner to make a final determination to issue a permit.
 - (b) TDEC will distribute the approved Public Notice to interested persons who have requested TDEC notify them of inter-basin transfer permit applications and by posting it on the TDEC website. TDEC will also distribute the Notice to the individuals on the mailing list maintained

(Rule 1200-4-13-.04, continued)

by the Permit Section, Division of Water Pollution Control and to the individuals on the mailing list maintained by the Natural Resources Section, Division of Water Pollution Control.

(c) The Applicant shall distribute the approved Public Notice as follows:

1. Publish a notice of the permit application once a week for four consecutive weeks in a newspaper of general circulation in each potentially affected community in the river basin of origin;
2. Provide notice of the application to a responsible official with each potentially affected community and water user within the proposed basin of origin by certified mail, return receipt requested; and
3. Post a minimum of three public notices in public buildings, e.g., courthouses, libraries, city halls, in each potentially affected community in the river basin of origin.

- (2) During the comment period, any person who may be adversely affected by a water transfer may submit a statement to the commissioner briefly outlining why the person believes he may be adversely affected and making any comments in regard to permit issuance or denial or permit conditions. Upon receipt of such a statement, the commissioner will schedule a public hearing on the permit application. Notice shall be given of the public hearing at least thirty days prior to the hearing.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.05 CRITERIA FOR ISSUANCE OF INDIVIDUAL PERMITS

- (1) In reviewing a permit application, the commissioner shall consider information developed through studies, analyses, or inquiries undertaken by the commissioner and information and comments submitted to the commissioner by the applicant, public agencies, affected persons, and the public.
- (2) The following factors will be used by the commissioner in making a determination on a permit application:
 - (a) the quantity of the proposed withdrawal and the stream flow of the losing river(s), with special concern for low flow conditions;
 - (b) protection of the present uses, and consideration of projected stream uses of the losing river(s), including but not limited to, present agricultural, municipal, industrial and in-stream uses, and assimilative needs, with special concern for low flow conditions;
 - (c) protection of the water quality in the losing river(s) at low flow conditions;
 - (d) the reasonably foreseeable future water needs of the losing river basin;
 - (e) the reasonably foreseeable future water needs of the applicant for the water to be transferred, including methods of water use, conservation, and efficiency of use;
 - (f) the beneficial impact of any proposed transfer, and the capability of the applicant to implement effectively its responsibilities under the requested permit;
 - (g) the nature of the applicant's use of the water, to determine whether the use is reasonable and beneficial;

(Rule 1200-4-13-.05, continued)

- (h) whether the proposed project shall promote conservation of water;
- (i) the feasibility, the costs, and the environmental impacts of alternative sources of supply;
- (j) the requirements of other state or federal agencies with authority relating to water resources;
- (k) the availability of water in the losing river basin to respond to emergencies, including drought;
- (l) whether the project shall have any beneficial or detrimental impact on navigation, hydropower or other power generation, fish and wildlife habitat, aesthetics, or recreation;
- (m) the quantity, location, and timing of water returned to the basin of origin or a downstream basin;
- (n) climatic conditions;
- (o) any offsetting increases in flow in the basin of origin that may be arranged through permit conditions;
- (p) the number of downstream river miles from which water will be diverted as a result of the transfer; and
- (q) such other factors as are reasonably necessary to carry out the purposes of the Act and this rule chapter.

The foregoing list is to be used by the Commissioner as a basis both to deny permits and to impose conditions in permits that are issued. The Commissioner should use sound discretion in applying this list. It is not intended that the Commissioner must deny a permit if, in considering the list as a whole, it is the Commissioner's judgment that the permit should be issued. On the other hand, if one or two of the factors are of such overriding importance that it is the Commissioner's determination that they necessitate denial of a permit, that is an appropriate use of these factors.

- (3) No transfer of water may be permitted at any time that would impair the classified uses of a losing river. Furthermore, no transfer of water shall cause the remaining flow in the losing river basin to be less than the seven day, ten year low flow as established prior to the inter-basin transfer unless a condition on the permit states that the transfer of water shall be required to cease when the instantaneous stream flow of the river of origin is equal to or less than a specified value.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.06 TERMS AND CONDITIONS FOR INDIVIDUAL PERMITS

- (1) Based upon review of all pertinent information the commissioner may issue, deny or issue a permit with conditions.
- (2) When issuing a permit, the commissioner may include conditions in the permit, including but not limited to the following:
 - (a) The amount of water approved for transfer may be varied seasonally;
 - (b) The transfer of water shall be required to cease or decrease when the instantaneous stream flow of the river basin of origin is equal to or less than a specified value;
 - (c) Special provisions in order to promote an adequate water supply for the state or to mitigate any future adverse conditions resulting from the transfer;

(Rule 1200-4-13-.06, continued)

- (d) Installation, maintenance and use of stream flow monitoring equipment;
 - (e) Establishment and reporting of transfer activities by the permittee.
- (3) Upon the issuance by the Governor of a declaration or proclamation of an emergency relating to water resources, the commissioner may:
- (a) waive the usual permitting requirements and issue a temporary emergency transfer permit. Any such permit must be limited to meet the needs created by the emergency, and any such permit may be issued for a period no longer than six months or the duration of the Governor's declaration or proclamation, whichever period is shorter; or
 - (b) modify or revoke and reissue any inter-basin transfer permit.
- (4) Permits shall be issued for a renewable term of not more than five years. The commissioner may coordinate permits with the issuance cycle for NPDES permits in a watershed.
- (5) Permits may contain such terms and conditions as are appropriate to carry out the purposes of the Act and this chapter. This includes, but is not limited to, provisions for filing periodic reports on the amount transferred and the flow in the losing river.
- (6) Applicants may apply for permit modifications to increase the authorized transfer amount or for other reasons within the term of the permit.
- (7) The Commissioner may modify, suspend, or revoke a permit for the reasons specified in section 7 of the Act.
- (8) A transfer permit may be renewed following a full review by the commissioner of all past and current information relating to the transfer. An application for transfer permit renewal shall be filed by the applicant with the commissioner a minimum of six months prior to permit expiration.
- (9) No permit may be transferred from one person to any other person except upon review and approval by the commissioner. In reviewing a request for a permit transfer, the commissioner may modify any of the permit terms.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.07 GENERAL PERMITS

- (1) The commissioner may issue a general permit for a category of transfer activities. Such permits shall be issued using the same process of public notification as would be used for an individual permit except that the department will bear the costs involved. Such permits shall require:
- (a) that any person intending to make use of a general permit for authorization of any transfer must file a Notice of Intent and pay the processing fee specified in the general permit; and
 - (b) that the department will issue a response either confirming that the general permit is applicable or stating why it is not and directing the person to file an individual permit application.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

(Rule 1200-4-13-.06, continued)

1200-4-13-.08 ENFORCEMENT AND PENALTIES

- (1) Any person who
 - (a) fails to make a timely application or renewal application for a permit required by the Act;
 - (b) commences an inter-basin transfer without having obtained a permit under the Act and these rules;
 - (c) fails to comply with the terms of a permit; or
 - (d) fails to submit a true and accurate report required by the Act and these rules;is subject to a penalty of up to \$10,000.00 per day per violation as provided in §9 of the Act.
- (2) The commissioner is also authorized to file an action in court to address any violation of the Act seeking any remedy available under the Act or at common law.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.09 HEARINGS

- (1) Any person actually aggrieved by the decision of the commissioner to grant or deny a transfer permit may request a hearing before the Water Quality Control Board by filing a written petition within 30 days of the issuance of the decision. With the exception of an applicant for a transfer permit, any person who has not submitted a written comment under 1200-4-13-.04 above, indicating how such person will be adversely affected by a water transfer in a manner or to a degree significantly different from the general public, is not an aggrieved party within the meaning of these rules.
- (2) Any person named in a Commissioner's Order or assessment may request a hearing before the Water Quality Control Board by filing a written petition within 30 days of the receipt of the order or assessment. The petition shall set forth the grounds and reasons for the appeal. If such a petition is not filed within the 30 days, the violator shall be deemed to have consented to the assessment and it shall become final.
- (3) Any such hearing will be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-301 et seq.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.10 ANNUAL CERTIFICATION

- (1) On or before October 1 of every year, any person who operated an existing inter-basin transfer on May 31, 2000, either directly or through one or more intermediaries, shall file with the department a statement under oath certifying that there has been no increase in the transfer together with flow or pumping records documenting the amount transferred. The department may develop a form for this purpose.

Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq. **Administrative History:** New rule filed December 29, 2000; effective March 14, 2001.

1200-4-13-.11 PROTECTED AREAS

(Rule 1200-4-13-.11, continued)

Protected areas may be established through a rulemaking action by the Water Quality Control Board. Any person desiring to have such an area established may request this action by sending a letter to the Board stating the basis for such action. The Uniform Administrative Procedures Act also allows a more formal process for requesting a rulemaking action in T.C.A. §4-5-201.

Authority: *T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.* **Administrative History:** *New rule filed December 29, 2000; effective March 14, 2001.*